

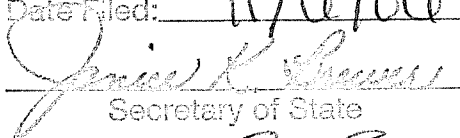

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF PEORIA

THIS AGREEMENT is entered into this date November 6th, 2006, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF PEORIA, acting by and through its MAYOR and CITY COUNCIL (the "City"). The State and the City are collectively referred to as "Parties".

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes §11-952 *et seq.* and the City Charter Article 1, Section 3 (15) to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. The work embraced in this Agreement is for the design and construction of paving "old" Carefree Highway from Lake Pleasant Road, west to Beardsley Canal for a length of 1.26 miles, hereinafter referred to as the "Project."
4. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
5. Such Project lies within the boundary of the City and has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for their approval.
6. The City, in order to obtain Federal Funds for the construction of the project, is willing to provide City funds to match Federal Funds in the ratio required or as finally fixed and determined by the City and FHWA, including actual construction engineering and administration costs (CE).

NO. 28529 A
Filed with the Secretary of State
Date Filed: 11/16/06

Secretary of State
By: 

7. The State's interest in the project is in the acquisition of Federal Funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

8. This is a PM-10 paving project and is part of the City's commitment to pave designated dirt roads. The State will be responsible for administering the Project. The estimated cost of the Project is as follows:

TRACS No.: SS559 01C

Estimated Project Cost*	\$1,250,145.00
Federal Aid Funds @ 94.3% (capped)	\$ 845,000.00
City Funds @ 5.7%	\$ 51,076.00
Estimated City Funds @ 100%	\$ 354,069.00
Total Estimated City Funds	\$ 405,145.00

*(Includes 15% CE and 5% project contingencies)

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. Submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

b. If such Project is approved for construction by FHWA and the funds are available for construction, hereby agree to be the authorized agent for the City. With the aid and consent of the City and the FHWA, the State will proceed to advertise for, receive and open bids, and subject to the concurrence of the City and the FHWA, enter into a contract(s) with a firm(s) on behalf of the City to whom the award is made for the construction of the project. Such project is to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the City and the Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation.

c. Enter into a Project Agreement with FHWA on behalf of the City covering the work encompassed in said construction contract and will request the maximum Federal Funds available, including construction engineering and administration costs. Should costs exceed the maximum federal funds available, it is understood and agreed that the city will be responsible for any overage.

d. Upon execution of this Agreement, provide the City with an invoice for reimbursement to the State for the City's estimated share of the Project, currently estimated at \$405,145.00. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

e. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City shall:

a. If such project is approved for construction by FHWA and the funds are available for design and construction, hereby designate the State as authorized agent for the City.

b. Upon execution of this Agreement and within thirty days (30) upon receipt of an invoice from the State, remit to the State the City's share of costs, currently estimated at \$405,145.00. Once the Project costs have been finalized and upon receipt of an invoice from the State, reimburse the State for any excess actual costs over the estimated costs.

c. Be obligated to incur the cost increase of said work due to unforeseen conditions or circumstances required by a change in the extent or Scope of Work called for by the City in this Agreement.

d. Upon completion of Project, formally accept the Project and provide maintenance to paving and roadway of said Project.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements; provided herein. However, any provisions for maintenance of the paved roadway, as provided by the City, shall be perpetual. This Agreement may be cancelled at any time prior to the award of a Project construction contract, upon thirty-days (30) written notice to either party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said Project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans and specifications, reports and the engineering in connection therewith, the construction of the improvements contemplated, cost over-runs and construction claims. The City will require its contractor(s) to name the State and ADOT as an additional insured in the contractor(s) insurance policies. The City will also require its contractors to name the State as an additional indemnitee in the City's contracts with its contractor(s). It is understood and agreed that the State's participation is confined solely to securing Federal Aid and to acting as the City's designated authorized agent as defined by RECITALS #6 and SCOPE OF WORK #1.b; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the City and that, to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or non performance or negligent performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees, shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

3. The cost of construction and construction engineering work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
(602) 712-7525
(602) 712-7424 Fax

City of Peoria
Attn: Engineering Director, Capital
Division
8401 West Monroe Street
Peoria, Arizona 85345
(623) 773-7212
(623) 773-7309 Fax

9. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

10. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

11. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF PEORIA

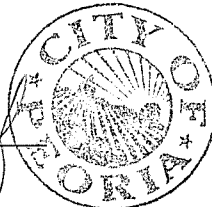
By _____

John C. Keegan
Mayor

ATTEST:

By _____

MARY JO KIEF
Clerk



STATE OF ARIZONA

Department of Transportation

By _____

CYNTHIA MILLS
Contract Administrator

G:\06-042 City of Peoria
8/29/06 draft2 ghc

L CON 10506

JPA 06-042

ATTORNEY APPROVAL FORM FOR THE CITY OF PEORIA

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the City of Peoria, an Agreement among public agencies, which has been reviewed pursuant to A.R.S. § 11-951 through § 11-954, and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 4th day of October, 2006.



STEVE KEMP

City Attorney

L CON 10506



City of Peoria

8401 West Monroe Street, Peoria, Arizona 85345

CERTIFICATE OF RECORDING OFFICER

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

I, the undersigned, Mary Jo Kief, being the duly appointed, qualified and acting City Clerk of Peoria, Maricopa County, Arizona, do hereby certify that the attached document Resolution No. 06-141 was passed and adopted by the Mayor and Council at the Regular City Council Meeting held on October 3, 2006. I further certify that this is a true and exact copy of the original on file and of record in the Office of the City Clerk.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said City of Peoria this 9^h day of October, 2006.





Mary Jo Kief, CMC
City Clerk

RESOLUTION NO. 06-141

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF PEORIA, ARIZONA, ADOPTING A RESOLUTION APPROVING THE INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA FOR ACQUISITION OF FEDERAL FUNDS FOR CONSTRUCTION AND ADMINISTRATION OF THE OLD CAREFREE HIGHWAY DIRT PAVING PROJECT.

WHEREAS, the City of Peoria Mayor and City Council are authorized by Title 9, Chapter 2, Article 4, Section 9-276 (1) to lay out and establish or otherwise improve streets, alleys, avenues, sidewalks, etc. and by Title 11, Chapter 7, Section 11-951 *et seq.* to enter into intergovernmental agreements with other governing bodies for services or joint exercise of powers; and

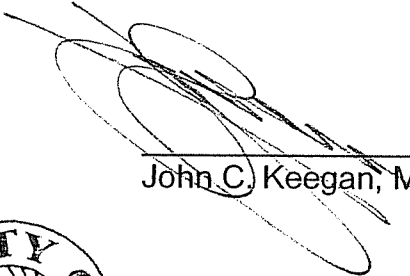
WHEREAS, the City desires to enter into an intergovernmental agreement with the State of Arizona for the acquisition of federal funds for the use and benefit of the City for construction and administration of the old Carefree Highway dirt paving project; and

WHEREAS, the City is willing in order to obtain such federal funds for the construction and administration of the old Carefree Highway dirt paving project to provide City matching funds; and

WHEREAS, by the City entering into the intergovernmental agreement with the State of Arizona the public interest will best be served;

THEREFORE, BE IT RESOLVED that the Mayor and City Council of the City of Peoria, Arizona approves and adopts this Resolution to enter into an intergovernmental agreement with the State of Arizona for the acquisition of federal funds for construction and administration of the old Carefree Highway dirt paving project.

PASSED AND APPROVED by the Mayor and City Council of the City of Peoria,
Arizona this 3rd day of October, 2006.



John C. Keegan, Mayor

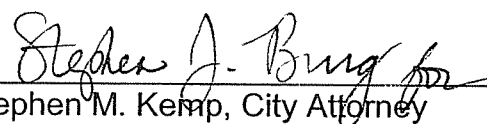
ATTEST:



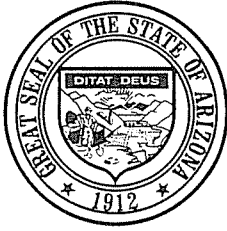
Mary Jo Kief, City Clerk



APPROVED AS TO FORM:



Stephen M. Kemp, City Attorney



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION
MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: 602-542-8859
Fax: 602-542-3646


INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR06-0874TRN (**JPA06-042**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED October 30th, 2006.

TERRY GODDARD
Attorney General



JEFFREY T. MURRAY
Assistant Attorney General

JTM:dgr
Attachment
985136